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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 279

HIGHLANDER FOLK SCHOOL, *et al.*

v.

STATE OF TENNESSEE *ex rel.* A. F. SLOAN, District Attorney General, 18th Judicial Circuit

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF TENNESSEE

CECIL D. BRANSTETTER
GEORGE E. BARRETT
216 Third Ave. No.
Nashville 3, Tennessee
Attorneys for Petitioner

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Petitioner, Highlander Folk School (hereafter "Highlander"), prays that a writ of certiorari issue to review the judgment of the Supreme Court of Tennessee in the above entitled case ordering the revocation of petitioner's charter and the extinction of its corporate existence.

OPINIONS BELOW

The opinion of the Circuit Court of Grundy County, Tennessee, is unreported. It appears in Appendix A hereto at p. 10a. The opinion of the Supreme Court of Tennessee is reported at 345 S.W. 2d 667, and appears in Appendix A at p. 1a. The judgment of that Court

appears in Appendix A at p. 8a. The opinion and judgment of the Supreme Court denying petitions for rehearing appear in Appendix A at p. 8a.

JURISDICTION

The opinion and judgment of the Supreme Court of Tennessee were filed on April 5, 1961 (R. 1822, 1832). A timely petition for rehearing was denied by that court on May 5, 1961 (R. 1859). The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3).

QUESTIONS PRESENTED

1. Whether the court below, in holding that the activities of petitioner, a racially integrated adult school, had violated state law and warranted the forfeiture of petitioner's charter, after a trial in which the trial court had refused to excuse jurors who on *voir dire* expressed their prejudice against petitioner and had permitted the introduction of evidence irrelevant to the issues and calculated solely to inflame the already demonstrated passions of the jurors, did not so far depart from applicable rules of state law and from its own precedents as to deny to petitioner due process of law and equal protection of the laws in violation of the Fourteenth Amendment.

2. Whether the trial court, in ordering the revocation of petitioner's charter on the ground that petitioner had violated state law forbidding the operation of integrated private educational institutions, deprived petitioner of due process of law and of equal protection of the laws in violation of the Fourteenth Amendment, and whether this Court is precluded from consideration of that question when the court below purported to sustain the judgment of the trial court on other grounds, when those grounds are insubstantial.

CONSTITUTIONAL PROVISION INVOLVED

This case involves the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution. That Amendment in pertinent part provides:

> ". . . nor shall any state deprive any person of life, liberty or property without due process of law, or deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

Petitioner was chartered by the State of Tennessee in 1934 as a general welfare non-profit corporation (R. 60). The charter application recited that (R. 61):

> "The particular purpose for which this Charter is sought is for the support of Highlander Folk School, adult workers education, the training of rural and industrial leaders, and general academic education."

Highlander was then and is now located in a rural area in Grundy County, Tennessee (R. 789). During the 1930's Highlander engaged primarily in training labor leaders and young workers in the utilization of rights accorded them by the then recently passed National Labor Relations Act (R. 793, 1510, 1560, 1650). Following World War II, the school's activities shifted from the labor field to the area of racial problems (R. 1505), and since that time the activities of the school have been primarily the promotion by education of a fuller participation of Negroes in the political, economic and social life of the South (R. 809-811, 822). In the course of these efforts Highlander has operated on a fully racially integrated basis (R. 47, 103).

Highlander's policy of racial integration in time drew the attention of the Legislature of the State of Tennessee. In 1959 the Legislature passed a resolution calling for an investigation of Highlander. House Joint Res. No. 30, Pub. Acts Tenn. (1959), p. 1091. A Legislative Committee appointed pursuant to this resolution held a series of open and closed hearings at which attention was focused almost exclusively upon the fact that the school operated on an integrated basis, a state of affairs which the Committee's witnesses apparently deemed to be plain evidence of subversion.

On March 6, 1959 the Committee filed a report with the Legislature criticizing the interracial activities carried on at the school, alleging that these activities were subversive, and recommending a legislative resolution instructing the District Attorney General to institute suit for revocation of Highlander's charter. The Legislature duly passed such a resolution. Sen. Joint Res. No. 47, Pub. Acts Tenn. (1959), p. 1235; R. 110.[1]

The Attorney General thereupon instituted suit against Highlander, seeking simultaneously an injunction on the ground that Highlander was operating as a nuisance and a forfeiture of Highlander's charter for allegedly illegal activities. The bill alleged: (1) that Highlander was operating in violation of certain compulsory segregation statutes of Tennessee (see T.C.A. 49-3701); (2) that lewd and immoral conduct consistently took place on Highlander's property: (3) that Highlander had engaged in the sale of

[1] The statutes of the State of Tennessee make it mandatory for the District Attorney General to proceed with a quo warranto proceeding when directed to do so by the General Assembly. See T.C.A. 23-2809.

beer without a license in violation of Tennessee law; and (4) that Highlander had been operated for the personal profit of its President, Myles Horton (R. 7-12, 90-93). Highlander's answer admitted that it operated on an integrated basis, and alleged that to forbid such operation would violate the Fourteenth Amendment. It denied the other charges in the bill and asserted that they were merely a pretext to seek to penalize Highlander for its racial activities (R. 36-58, 98-105).

On September 14-16, 1959, the Circuit Court of Grundy County, sitting without a jury, heard evidence on the charges of immoral conduct and unlawful sale of beer. It found no support for the first of these charges, but held that Highlander had made unlawful sales of beer by reason of the fact that it had had for a time a "revolving fund" by which it made beer available on a non-profit basis to persons connected with the Institution (R. 1735).[2] On the basis of its holding, the court granted the State a temporary injunction, ordering the padlocking of one of the buildings on Highlander's grounds. (R. 1735)

Some 45 days thereafter, in November 1959, the quo warranto aspects of the case came on for hearing before a jury (R. 189). Because the issues as to immoral conduct and as to the legality of petitioner's "revolving fund" for beer had already been adjudicated by the court, and because the integrated operation of the school was admitted and hence posed no issue of fact, the only question to be submitted to the

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[2] The use of this "revolving fund", and the availability of beer on Highlander's premises, had been discontinued more than a year prior to the bringing of the action for reasons altogether unrelated to its lawfulness (R. 723, 1507, 1511, 1512, 1588).

jury was whether Highlander had been operated for the personal profit of its President, Myles Horton (R. 131, 974).

During the selection of jurors it became readily apparent that Highlander was not to receive the fair trial by an unbiased jury to which it was entitled under the Fourteenth Amendment and that the true issue in the minds of the Court and jury alike was not that ostensibly before them but rather simply whether an integrated educational institution, such as Highlander, should be permitted to operate in rural Tennessee. A large number of jurors were excused because they stated that they had made up their minds that Highlander should be closed down.[3] A number of jurors, however, who likewise on the *voir dire* stated categorically that in their opinion an integrated institution such as Highlander should not be permitted to operate,[4] were eventually, after some effort

[3] For example, the first juror called testified on voir dire as follows:

"Q. And you have heard it said and you yourself believe that no Negroes should be allowed on the mountain?
"A. Yes sir." (R. 240-241)

See also R. 282, 287, 292-293, 330, 343, 346-348, 359, 364-366, 375, 390, 425, 435-436.

[4] Among the answers elicited on voir dire from jurors subsequently seated over petitioner's objection was the following:

Juror Medley:

"Q. Do you think and is it your belief, that Negroes and white people should attend the same classes together?
"A. Well, I don't think so." (R. 251-252)

Juror Smartt:

"Q. Are you opposed in your thinking to whites and Negroes attending the same classes?

at their rehabilitation by the court with extremely leading questions (R. 255, 269, 281, 287, 300, 302-306, 311, 313, 323, 369, 387, 389, 393, 397, 456), seated over the objection of Highlander (R. 252, 255, 260, 267, 269, 306, 314, 320, 329, 362, 414, 446, 452, 475). Thus at the outset of the trial Highlander, on trial for its corporate life, was deprived of the unbiased finder

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"A. Well, that is the law, I reckon. I don't favor that myself.

"Q. You are not in favor of it? You don't believe in it, do you?

"A. No, sir." (R. 267)

Juror Thompson:

"Q. And if there is a school where whites and Negroes attend the same class room, you think that it shouldn't be permitted to exist. Is that right?

"A. Well, I don't think they should mix. That is all I know." (R. 322)

Juror Walker:

"Q. I'm asking you, if it is your opinion, your opinion and your abiding conviction that any place where that occurs should not be permitted in this country?

"A. Well, I wouldn't want to." (R. 362)

Juror Hargis:

"Q. You have an opinion that you wouldn't do it? You don't think it is right, do you, Mr. Hargis?

"A. Do you mean integration?

"Q. Yes sir.

"A. No, I don't." (R. 414)

Juror Layne:

"Q. Do you have any settled opinion or abiding conviction that white and Negro people should not be permitted to attend classes and mixed group or sit side by side in lectures and things of that nature?

. . . . .

"A. Well, my own personal opinion as you know, I have never been used to it." (R. 452)

of fact guaranteed to it by the due process clause of the Fourteenth Amendment.[5]

During the course of the hearing the denial to Highlander of its constitutional right to a fair trial continued. Despite the fact that neither the question of racial integration at Highlander nor the alleged sale of beer without license were before the jury for decision, the court, over Highlander's objection, permitted the State to introduce a mass of material, in the form of testimony, photographs, etc., largely relating to integrated dancing, eating and study on the Highlander premises, which was demonstrably irrelevant to any issue before the jury for decision, and inescapably designed and calculated solely to arouse and inflame the already demonstrated passions of the jury.[6]

With respect to the issue as to "personal gain" tendered to the jury for decision, the basic reliance of the State was on the fact that in 1958 Highlander had conveyed to its President, Myles Horton, certain land and a house which had been constructed thereon (R. 9). Highlander proved, without contradiction, that this

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[5] Highlander had theretofore exhausted the three peremptory challenges permitted it under Tennessee law on prospective jurors who displayed on *voir dire* such a deep and clear bias that Highlander was plainly entitled to have them excused for cause (R. 316, 329).

[6] These exhibits consisted of photographs (R. 695-698) showing Negroes and whites, attending classes together, eating together, dancing together, and in general, socializing together. They also consisted of a number of "Tickets" showing delivery of beer to Highlander's campus (R. 523, 528, 660-671). In addition thereto, the Attorney General was permitted to read testimony of persons in regard to the presence of Negroes and whites at Highlander together, and the presence of beer on the campus (R. 660-689; 692-707, 711-731).

conveyance had been made after a careful study by a special committee appointed by the governing body of Highlander and was in recognition of more than 20 years of service by Myles Horton as President with no compensation beyond subsistence for himself and his family (R. 43, 789-790, 792, 795, 798-802, 814, 835, 850, 1505). Petitioner also proved that it was in excellent financial condition (R. 503, 878), its assets having increased from approximately $2,000 in 1934 to some $175,000 by the time of trial (R. 494, 812, 815; Exh. 1, 2, 3), and that the house conveyed to Mr. Horton had been constructed almost entirely with personal funds of his late wife (R. 799, 815, 817-819, 854, 911). On these facts the jury, after the very briefest deliberation (R. 1025), returned a verdict holding that Highlander had been operated for the personal profit of its President.

The court thereupon ruled (R. 128-138) that Highlander's charter should be forfeited: (1) because it had sold beer in violation of State law; (2) because it had been operated for Myles Horton's personal profit; and (3) because its operation as an integrated institution was unlawful under Tennessee law.

Petitioner appealed to the Supreme Court of Tennessee,[7] urging, *inter alia*, that its right under the due process and equal protection clauses of the Fourteenth Amendment had been denied by the failure of the trial court to follow controlling state precedents which established that the handling of beer and the dealings between Horton and Highlander were altogether lawful

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[7] Petitioner's appeal is contained in its printed "Assignment of Error, Brief and Argument," a copy of which is found at p. 1739 of the Record.

and proper, and that this discriminatory application of state law had inescapably been done because Highlander was racially integrated. Petitioner alleged also that the sanction decreed by the court—that of charter revocation—was wholly unauthorized by and specifically contrary to state law even were Highlander to be assumed to have violated state law in the respects charged. Highlander claimed also that its rights under the due process clause of the Fourteenth Amendment had been infringed by the denial to it of a fair and unbiased jury, and by the repeated admission of masses of wholly irrelevant and prejudicial evidence. Finally, Highlander challenged the constitutional validity of the Tennessee statute requiring segregation in educational institutions.

The Tennessee Supreme Court affirmed the holdings of the court as to beer sale and "personal profit". It did not purport to overrule, and indeed did not even discuss, prior Tennessee cases relied upon by petitioner as demonstrating the legality of its conduct, nor did it deal with petitioner's contention that charter revocation was unauthorized under Tennessee law as a sanction for the challenged activities of Highlander, even assuming those activities to be unlawful. The court, in a patent effort to avoid correction by this Court of its denial to Highlander of that institution's constitutional rights, held that it was unnecessary to pass upon the validity of the Tennessee segregation statute.

The constitutional issues presented by this petition were raised for the first time in petitioner's answer in the Circuit Court. There Highlander asserted it was being deprived of "Constitutional rights and civil liberties primarily because it conducted an integrated

educational institution." (R. 47). The answer further asserted that the revocation of petitioner's charter because of its integrated character would violate the due process clause of the Fourteenth Amendment (R. 99) and deny to petitioner the equal protection of the laws guaranteed by that Amendment (R. 100, 103, 105, 224).

In the motion for a new trial by Highlander, it asserted that the action of the jury and the trial court "constituted deprivation of rights guaranteed * * * by the 14th Amendment to the Constitution of the United States." (R. 172).

On appeal, Highlander asserted (R. 1739) that its constitutional rights had been violated by the trial court by its denial of a fair and impartial jury, and by the unequal application of the law by that court, and that the revocation of its charter by the trial court because of its integrated operation was "in contravention of defendant's rights under the * * * Fourteenth Amendment to the Constitution of the United States." After the decision by the State Supreme Court, and on the petition to rehear, Highlander asserted that the State Supreme Court violated these constitutional rights in affirming the action of the trial court and jury (R. 1840).

REASONS FOR GRANTING THE WRIT

This is the first case in the long history of the State of Tennessee in which the charter of *any* corporation has been revoked by the courts. It presents an unmistakable picture of discriminatory application of state law by state action in order indirectly to forbid the exercise of constitutionally protected rights which the

state is powerless to reach directly. It stands as a warning to any who would challenge the segregationist traditions of Tennessee that they will be subjected to harassment by the full power of the state, and will be treated as a class apart in the application to them of state law. This warning has not gone unheeded.[8]

Highlander does not contend that it is exempt from the laws of the State of Tennessee simply because it happens to be a racially integrated institution. Rather, it asserts no more than that it is entitled to be judged according to the same principles of Tennessee law that are applicable to other bodies corporate and that the equal protection and due process clauses forbid the courts of Tennessee to apply to it rules of purported Tennessee law designed for it alone, either as ostensible grounds to justify the most severe possible kind of punitive action against it or as a device that seeks to frustrate review by this Court of the only ground for punishment that finds support in this record, namely, that petitioner's integrated operations were contrary to the segregation laws of the State of Tennessee.[9]

The evidence as to the method by which beer had been for a time dispensed at Highlander to personnel there is essentially uncontradicted. Highlander pur-

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[8] See *Minutes of the General Assembly, Cumberland Presbyterian Church*, 1960, at p. 105, wherein the Board of Trustees of Bethel College unanimously reported that integration of that college should be deferred until this case was determined. The Report is attached hereto as Appendix B.

[9] The unconstitutionality of these laws is so plain on their face, see, *e.g.*, Brown v. Board of Educ., 347 U.S. 483; Shelley v. Kraemer, 334 U.S. 1, that petitioner believes it unnecessary to argue the point further.

chased beer with a "revolving fund" as a service to its personnel (R. 1511, 1587). This beer was available in a room on the school premises where items such as candy, razor blades, cigarettes and the like were also available (R. 722). A staff member, student, or guest of the school could take a can of beer as he wished, and put some money in a box provided for that purpose which in turn became part of the "revolving fund" (R. 722, 820, 1511-13). No profit was realized on these transactions, and in fact the system operated at a loss (R. 722). This activity had been voluntarily discontinued about a year before the complaint by the State (R. 723, 1507, 1511, 1512, 1588).

The Supreme Court of Tennessee has had occasion in the past to determine whether conduct of this sort violates the criminal or nuisance statutes of the state, and has uniformly and explicitly held that it does not. In *Moriarty* v. *State*, 122 Tenn. 440, 124 S.W. 1016 (1909), an indictment against an employee of a general welfare non-profit corporation for "selling intoxicating beverages" was dismissed on the grounds that his activity was a service provided for the members of the corporation and was not a sale or carrying on of commercial activities as understood under the law. The court said (122 Tenn. at pp. 443, 451, 453, 124 S.W. at pp. 1016-1017, 1019):

> "Thus it has been held that in one class of the cases that a bona fide social club, organized for the purpose of establishing a library in connection with a club room for social enjoyment, may serve its members and their invited guests intoxicating liquors, the members only paying therefor, the money so received being used to replenish the stock, but insufficient for that purpose, without

being liable to pay license required of retail liquor dealers. . . .

". . . Not only is this record without suggestion that there was a profit made in the disposition of the liquor in this Elks Lodge, which was carried into a 'general fund' to be used as might be in defraying the expenses of the club; but the fact is that no profit was made, the price charged for the liquor served being the simple equivalent of its price and the cost of serving the same to the members.

"We are satisfied from the uncontroverted facts in the record that the Knoxville Lodge of Elks, like the present lodge, is a bona fide association, organized for social, fraternal, and benevolent purposes, and that the furnishing of refreshments, inclusive of intoxicants, to its members, is purely incidental, and that the lodge was not engaged in the 'handling of liquor for sale' within the sense of the revenue act of 1907."

A few years later, in *State ex rel. Whittaker* v. *Mountain City Club,* 136 Tenn. 102, 188 S.W. 579 (1916), the Supreme Court reaffirmed its position that conduct of the kind here involved does not constitute commercial activities or a "sale". Indeed, it expressly recognized that the citizens of Tennessee were entitled to rely upon this interpretation of the Tennessee law in ordering their personal affairs. In sustaining the dismissal of a nuisance suit, the court stated (136 Tenn. at pp. 113, 116; 188 S.W. at p. 582):

"It is insisted that the fact of selling at a profit is really immaterial, and we are asked to reconsider these cases. *These cases have long been among our published decisions, and the people of the State have acted in view of them, and it would not be right to disregard them, defining, as they*

> *do, the privileges of the people in respect to personal conduct, involving the difference between crime and freedom from crime, with respect to the particular question involved.* . . . So, in the case before us, under the facts, the question really is whether the defendant was engaged in carrying on the business of a retail liquor dealer. If it was, it was guilty of committing a nuisance. If it was not so engaged, but was obeying the principles laid down in the cases of Tennessee Club v. Dwyer and Moriarty v. State, it was not guilty of committing a nuisance. It was obeying these principles and is not guilty." (Emphasis added)

There have been no decisions by the Supreme Court of Tennessee during the half century since the *Moriarty* case which have modified or changed the rules there laid down. Even in the present case, the Supreme Court of Tennessee did not purport to overrule these decisions. It simply ignored them. This case falls squarely within the principle long ago stated by this Court in *Yick Wo* v. *Hopkins,* 118 U.S. 356, 374:

> "No reason for (the discrimination) is shown, and the conclusion cannot be resisted that no reason for it exists except the hostility to the race and nationality to which the petitioner belongs and which in the eyes of the law is not justified. The discrimination is therefore illegal and the public administration which is enforcing it is a denial of equal protection of the law and in violation of the 14th Amendment to the Constitution."

The facts upon which the jury found that Highlander had been operated for the personal profit of its President have already been stated. As has been shown above (pp. 5-8) this finding was fatally infected by the fact that it was rendered by a jury several members of which had candidly admitted their prejudice against petitioner, in a trial at which petitioner's constitutional

rights were persistently disregarded by unwarranted introduction of evidence which had no relevance to the issue ostensibly being tried and which was plainly designed to further inflame the jury to petitioner's prejudice. See *Irvin* v. *Dowd*, 6 L. ed. 2d 751; *In re Murchison*, 349 U.S. 133. As in *Irvin*, the record inescapably demonstrates a community "pattern of deep and bitter prejudice", and shows that throughout the proceedings "the buildup of prejudice is clear and convincing." Accordingly, the judgment rendered as a result of those proceedings is constitutionally invalid.

Apart from this fatal defect, the drastic sanction of charter forfeiture invoked by the courts of Tennessee on the basis of the findings was without support in and indeed was directly prohibited by controlling Tennessee law and thus worked a denial to petitioner of the equal protection of the laws.

On the "personal profit" branch of its case, the State proceeded under T.C.A. 23-2817. As to relief in a case where officers of a corporation have been found to have diverted its assets, that section provides:

> ". . . (I)n the event the Court should find that the corporation, its stockholders, directors, officers or managers have intentionally impaired or depreciated its assets or property for the purpose of preventing the corporation from effectively discharging its duty to the public,[10] the property of the corporation shall escheat to the state *unless* its stockholders, directors, officers or managers, within a reasonable period fixed by the court, restore to the treasury of the corporation a sufficient amount of money or property to enable it to effectively dis-

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[10] It was agreed to and stipulated to by the parties that the school was operating within the confines of its charter (R. 970) and the Court so found (R. 136).

charge its duty to the public; and also that the corporation, its directors, or managers, as the case may be, pay the costs."

Under the Tennessee law, where, as in Section 23-2817, a statutory remedy is provided with respect to any violation of law, that and only that remedy may properly be decreed by the court. See *Bailey* v. *Union National Bank*, 159 Tenn. 659, 121 S.W. 2d 393 (1929). This settled rule of Tennessee law was, like petitioner's other contentions as to the applicable state law, simply ignored by the court below.

In the long course of Tennessee jurisprudence, the courts of the State have never in any quo warranto proceeding revoked the charter of a corporation, but rather have followed and applied less drastic remedies on the ground that they suffice to correct the illegality. Even the most flagrant violations by corporations of their charter provisions have never resulted in the extinction of corporate existence as decreed in this case. See *State ex rel.* v. *Family Loan Co.*, 167 Tenn. 654, 73 S.W. 2d 167 (1934); *State ex rel.* v. *Retail Credit Men's Ass'n*, 163 Tenn. 450, 43 S.W. 2d 918 (1931); *State ex rel.* v. *Southern Publishing Co.*, 169 Tenn. 257, 84 S.W. 2d 580 (1935). Thus even if the State be assumed, contrary to fact, to have established the illegality of Highlander's operations in the respects charged, the sanction decreed in itself constituted a denial to petitioner of the equal protection of the law.

As a citizen of the State of Tennessee, Highlander is entitled to equal treatment under state law with every other Tennessee corporation, except to the extent that there are differences between it and other corporations of which the state may properly take cognizance within the limits of the Federal Constitution. On this record

it is clear that Highlander is unique only in the fact that it is racially integrated. It requires no citation of authority to establish that this difference between Highlander and other corporations may not, consistent with the Fourteenth Amendment, be relied upon by the State as a basis for the invidious treatment of Highlander under state law.

From the foregoing it is evident that the genesis of the proceedings against petitioner, and the true reason for the judgment rendered against it, was what the trial court held to be the illegality of its integrated operations, and that the "state grounds" ostensibly relied upon by the court below were merely make-weights designed to insulate this patently insupportable constitutional adjudication from further review. More than half a century ago Mr. Justice Holmes, speaking for an unanimous Court, unequivocally recognized the duty of this Court under these circumstances in words remarkably apposite to the instant case:

> "[W]e cannot decline jurisdiction of a case which certainly never would have been brought but for the passage of flagrantly unconstitutional laws, because the state court put forward the untenable construction [of a corporate charter] more than the unconstitutional statutes in its judgment. To hold otherwise would open an easy method of avoiding the jurisdiction of this court." *Terre Haute & I.R.R.* v. *Indiana ex rel. Ketcham*, 194 U.S. 579, 589.[11]

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[11] This is but one expression of a long-recognized principle which was recently applied to prevent an effort by a state supreme court to evade review by this Court of a substantial federal constitutional claim in circumstances not unlike those here presented. See NAACP v. Alabama ex rel. Patterson, 357 U.S. 449. See also Gelpcke v. City of Dubuque, 1 Wall. 175, 207 ("we shall never immolate truth, justice, and the law, because a State tribunal has erected the altar and decreed the sacrifice"); Note, The Untenable Nonfederal Ground, 74 Harv. L. Rev. 1375.

CONCLUSION

This case is one more of a sorry series in which state courts have, in derogation of their constitutional obligation, sought to evade the command of the Fourteenth Amendment that all persons similarly situated are entitled to identical treatment under law regardless of race. To permit the ready evasion of this constitutional mandate by the discriminatory manipulation of state law, and in a proceeding where the finders of fact are plainly determined to end by whatever means may be at hand a situation which challenges local segregationist custom, would be to deny the very concept of government under law.[12]

For the foregoing reasons the petition for a writ of certiorari to the Supreme Court of Tennessee should be granted.

Respectfully submitted,

CECIL D. BRANSTETTER
GEORGE E. BARRETT
216 Third Ave. No.
Nashville 3, Tennessee
Attorneys for Petitioner

August 1961

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[12] This case particularly merits the close scrutiny of this Court because at stake is the very existence of what is concededly a bona fide educational institution. Compare Sweezy v. New Hampshire, 354 U.S. 234.